

S T A T E O F N E W Y O R K

5739--B

2015-2016 Regular Sessions

I N S E N A T E

June 1, 2015

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to rates of payment to residential health care facilities based on the historical costs to the owner

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (d) of subdivision 2-a of section 2808 of the
2 public health law, as amended by section 52 of part B of chapter 57 of
3 the laws of 2015, is amended to read as follows:
4 (d) For facilities granted operating certificates on or after March
5 tenth, nineteen hundred seventy-five, recognition of real property costs
6 in such regulations shall be based upon historical costs to the owner of
7 the facility, provided that payment for real property costs shall not be
8 in excess of the actual debt service, including principal and interest,
9 and payment with respect to owner's equity, and further provided that,
10 subject to federal financial participation, and subject to the approval
11 of the commissioner, effective April first, two thousand fifteen, the
12 commissioner may modify such payments for real property costs for
13 purposes of effectuating a shared savings program, whereby facilities
14 share a minimum of fifty percent of savings, for facilities that elect
15 to refinance their mortgage loans. For purposes of this subdivision,
16 owner's equity shall be calculated without regard to any surplus created
17 by revaluation of assets and shall not include amounts resulting from
18 mortgage amortization where the payment therefor has been provided by
19 real property cost reimbursement; PROVIDED, HOWEVER, AS USED IN THIS
20 SUBDIVISION THE TERMS "HISTORICAL COSTS" AND "OWNER'S EQUITY" SHALL

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 INCLUDE THE FULL REVALUATION OF THE ASSETS OF A FACILITY PURCHASED AND
2 TRANSFERRED IMMEDIATELY FOLLOWING THE OPERATION OF SUCH FACILITY UNDER A
3 COURT-ORDERED RECEIVERSHIP, BUT ONLY IF:

4 (I) THE FACILITY HAS BEEN CONTINUOUSLY OPERATED AND OCCUPIED PRIMARILY
5 WITH PERSONS WHO ARE IN RECEIPT OF MEDICAL ASSISTANCE BENEFITS FROM THE
6 TIME THAT THE RECEIVERSHIP WAS ESTABLISHED UNTIL THE TIME OF PURCHASE OR
7 TRANSFER;

8 (II) THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL HAS CONSIDERED THE
9 APPLICATION FOR THE ESTABLISHMENT OF A NEW OPERATOR OF A RESIDENTIAL
10 HEALTH CARE FACILITY AT THE SITE OF THE FACILITY;

11 (III) THE COMMISSIONER HAS REQUIRED SIGNIFICANT UPGRADE TO THE FACILI-
12 TY'S PHYSICAL PLANT IN CONSIDERATION OF HIS OR HER APPROVAL OF THE
13 CONSTRUCTION OF A RESIDENTIAL HEALTH CARE FACILITY AT THE SITE OF THE
14 FACILITY; AND

15 (IV) THE COMMISSIONER HAS DETERMINED EACH OF THE FOLLOWING CONDITIONS
16 IS TRUE:

17 (1) THERE IS A CONTINUING NEED FOR THE BEDS AT THEIR CURRENT LOCATION;

18 (2) THE ESTIMATED TOTAL PROJECT COST FOR NEW CONSTRUCTION OF A FACILI-
19 TY OF THE SAME BED CAPACITY IN THE AREA WOULD SUBSTANTIALLY EXCEED THE
20 COMBINED PURCHASE PRICE AND TOTAL PROJECT COST FOR APPROVED RENOVATION
21 COSTS OF THE REVALUED FACILITY;

22 (3) THE PURCHASE PRICE IS REASONABLE; AND

23 (4) THE CONTINUED USE OF THE FACILITY AS A RESIDENTIAL HEALTH CARE
24 FACILITY IS IN THE PUBLIC INTEREST.

25 S 2. Paragraph (d) of subdivision 2-a of section 2808 of the public
26 health law, as added by chapter 483 of the laws of 1978, is amended to
27 read as follows:

28 (d) For facilities granted operating certificates on or after March
29 tenth, nineteen hundred seventy-five, recognition of real property costs
30 in such regulations shall be based upon historical costs to the owner of
31 the facility, provided that payment for real property costs shall not be
32 in excess of the actual debt service, including principal and interest,
33 and payment with respect to owner's equity. For purposes of this subdivi-
34 sion, owner's equity shall be calculated without regard to any surplus
35 created by revaluation of assets and shall not include amounts resulting
36 from mortgage amortization where the payment therefor has been provided
37 by real property cost reimbursement; PROVIDED, HOWEVER, AS USED IN THIS
38 SUBDIVISION THE TERMS "HISTORICAL COSTS" AND "OWNER'S EQUITY" SHALL
39 INCLUDE THE FULL REVALUATION OF THE ASSETS OF A FACILITY PURCHASED AND
40 TRANSFERRED IMMEDIATELY FOLLOWING THE OPERATION OF SUCH FACILITY UNDER A
41 COURT-ORDERED RECEIVERSHIP, BUT ONLY IF:

42 (I) THE FACILITY HAS BEEN CONTINUOUSLY OPERATED AND OCCUPIED PRIMARILY
43 WITH PERSONS WHO ARE IN RECEIPT OF MEDICAL ASSISTANCE BENEFITS FROM THE
44 TIME THAT THE RECEIVERSHIP WAS ESTABLISHED UNTIL THE TIME OF PURCHASE OR
45 TRANSFER;

46 (II) THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL HAS CONSIDERED THE
47 APPLICATION FOR THE ESTABLISHMENT OF A NEW OPERATOR OF A RESIDENTIAL
48 HEALTH CARE FACILITY AT THE SITE OF THE FACILITY;

49 (III) THE COMMISSIONER HAS REQUIRED SIGNIFICANT UPGRADE TO THE FACILI-
50 TY'S PHYSICAL PLANT IN CONSIDERATION OF HIS OR HER APPROVAL OF THE
51 CONSTRUCTION OF A RESIDENTIAL HEALTH CARE FACILITY AT THE SITE OF THE
52 FACILITY; AND

53 (IV) THE COMMISSIONER HAS DETERMINED EACH OF THE FOLLOWING CONDITIONS
54 IS TRUE:

55 (1) THERE IS A CONTINUING NEED FOR THE BEDS AT THEIR CURRENT LOCATION;

1 (2) THE ESTIMATED TOTAL PROJECT COST FOR NEW CONSTRUCTION OF A FACILI-
2 TY OF THE SAME BED CAPACITY IN THE AREA WOULD SUBSTANTIALLY EXCEED THE
3 COMBINED PURCHASE PRICE AND TOTAL PROJECT COST FOR APPROVED RENOVATION
4 COSTS OF THE REVALUED FACILITY;

5 (3) THE PURCHASE PRICE IS REASONABLE; AND

6 (4) THE CONTINUED USE OF THE FACILITY AS A RESIDENTIAL HEALTH CARE
7 FACILITY IS IN THE PUBLIC INTEREST.

8 S 3. This act shall take effect immediately; provided, however, that
9 the amendments to paragraph (d) of subdivision 2-a of section 2808 of
10 the public health law made by section one of this act shall not affect
11 the expiration of such paragraph and shall be deemed to expire there-
12 with, when upon such date section two of this act shall take effect.